APPENDIX

SUPREME COURT OF THE UNITED STATES

No. 72 Original

STATE OF SOUTH DAKOTA,
Plaintiff,

v.

STATE OF NEBRASKA,
Defendant.

Received June 10, 1977

REPORT OF SPECIAL MASTER AND RECOMMENDATION

In its Order, entered October 4, 1976, the Supreme Court of the United States, on consideration of the Motion for Leave to file a Bill of Complaint, granted the Motion of the plaintiff and allowed the State of Nebraska, defendant, thirty (30) days in which to answer.

On November 22, 1976, Robert J. Foley, Phyllis K. Foley, and Otto Isaak filed a Motion for Leave to Intervene as defendants in intervention and brief in intervention as defendants. In its Order of December 6, 1976, appointing the Honorable Oren Harris, Senior Judge, United States District Court for the Western District of Arkansas, Special Master in the case, the Court referred the Motion of Robert J. Foley, et al., for leave to intervene to the Special Master.

On January 26, 1977, the Special Master advised counsel for the parties that it is well established that procedures governing the exercise of the Supreme Court's original jurisdiction are not invariably governed by common-law precedent or current rules of civil procedure. United States Supreme Court, Rule 9. The parties were further advised that the Federal Rules of Civil Procedure, where appro-

priate, may be used as a guide as to procedure which will be utilized by the Special Master.

On the Motion of Robert J. Foley, et al, for leave to intervene as defendants and to file Complaint in Intervention, the Special Master directed counsel for the parties to file briefs with the Special Master. Such briefs have been received from counsel for the parties. Consideration has been given to the contentions of the parties on the Motion and, pursuant to reference of the Motion for Leave to Intervene to the Special Master by the Court, this report is submitted with the recommendation that an Order be entered granting leave to file complaint in intervention and that the intervenors be designated parties defendant in the case.

The stated purpose of the litigation is to determine jurisdiction between the States of South Dakota and Nebraska over an Island situated in the Missouri River, which forms the boundary between the States. The interest of South Dakota and Nebraska is to determine and protect their boundaries and sovereignity over real property within those boundaries against any encroachment.

From the record and briefs filed with the Special Master, there are approximately 994 acres involved in the dispute. The Movants (intervenors) contend they are the owners and in possession of the property to which their remote grantors acquired record title by patent dated March 28, 1865, consisting of approximately 147.65 acres and to which have been added accretions from the Missouri River until the Island and accretions have developed into the land mass presently in dispute. Intervenors contend that the real estate is now and at all times has been located in the State of Nebraska. The intervenors claim that the disposition of the dispute between the States may impair or impede their ability to protect their interest unless adequately represented as intervenors in the litigation.

The intervenors are citizens of South Dakota. The record discloses that there is a probable conflict between the intervenors and the State of South Dakota as to the ownership of the property. It is claimed, and with good reason, that, should South Dakota prevail and it be determined that the Island is located within the State of South Dakota, the State, by its appropriate agency, would claim title to the lands against the Movants.

The primary interest of the State of Nebraska is to protect its boundaries and sovereignty, without regard to the ownership of the property.

The intervenors' claims and defenses as to the major questions of law or fact are in common with those asserted by the defendants and, in the opinion of the Special Master, the exercise of the Court's discretion in permitting intervention will not unduly delay or prejudice the adjudication of the rights of the original parties.

In submitting this report, the Special Master respectfully recommends that the Motion of Robert J. Foley, Phyllis K. Foley, and Otto Isaak for leave to intervene as defendants and to file Complaint in Intervention be granted and that an Order be entered by the Court accordingly.

DATED this 8th day of June, 1977.

/s/ OREN HARRIS
Oren Harris
SPECIAL MASTER